Exhibit 1

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TEXAS

SAN ANTONIO DIVISION

ROY C. SPEGELE, individually and
on behalf of all others similarly situated,

Plaintiff,

vs. Case No. 5:17-CV-967-OLG

USAA LIFE INSURANCE COMPANY,

Defendant.

Videotaped Deposition of SCOTT WITT

Thursday, January 30th, 2020

9:08 a.m.

at

GASS WEBER MULLINS LLC
241 North Broadway
Milwaukee, Wisconsin

Reported by Tammy R. O'Neal, RPR

Videotaped deposition of SCOTT WITT, a witness in the above-entitled action, taken at the instance of the Defendant, pursuant to the Federal Rules of Civil Procedure, pursuant to notice, before Tammy R. O'Neal, RPR and Notary Public, State of Wisconsin, at Gass Weber Mullins LLC, 241 North Broadway, Milwaukee, Wisconsin, on the 30th day of January, 2020, commencing at 9:08 a.m. and concluding at 1:56 p.m.

A P P E A R A N C E S:

MILLER SCHIRGER LLC, by
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SIDLEY AUSTIN LLP, by
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Also Present: Jay Church, Videographer

circumstances, and it is shown at five different points in time, the original UL3 mortality, the repriced UL3 mortality, the 2001 mortality that's associated with the development of the UL4, the 2005 mortality which is the repricing of the UL4, and then the 2017 mortality is a recent -- based on a recent mortality study. And in the final column shows the percentage improvement from the original pricing to the latest 2017 mortality.
Q How many pricing cells are reflected on this chart?
A One.
Q Mr. Spegele's?
A Yes.
Q Did you analyze whether mortality improved over time in every pricing cell every time USAA life evaluated mortality?
A Not rigorously.
Q You know there's a question that's going to come after that response. When you say not rigorously, what does that mean you did do?
A I -- there were numerous studies in that interval, and I picked the latest one really you could say as a placeholder, just as a demonstration of the count three theory, as I understand it from Plaintiffs, that there were additional improvements in the

expected mortality.
And so I recall looking at others, but I was only picking one for the demonstration here, so I can't speak to the, you know, year-by-year, cell-by-cell trend other than to say that it generally -- based on a high-level overview, it generally appeared to be improving over time.
Q But that was -- tell me if this is fair -- that was more impressionistic as opposed to doing some sort of data analysis to see if that was true for every cell at every reevaluation of mortality?
A That's fair to say.
Q Did you in your analysis consider how policy beholder -- strike that.
Did your analysis consider how policyholder behavior would have changed had the cost of insurance rates been lower than they were?
A No.
Q What can a policyholder do in a universal life policy to either continue with the policy or have greater investment in the policy or lesser investment in the policy? Explain what their options are when they're in the middle of owning a universal life policy.
MR. LYTLE: Object to the form.
THE WITNESS: They often have premium

BY MR. MATTSON:
Q Throughout the life of the policy?
A Yes. I only took one to -- right, if you could -- as soon as I saw an instance where the COI was higher than the expected mortality, that said to me that under Plaintiff's theory, there would be damages.
Q And that's a distinct exercise, isn't it, from looking to see if overall, if you just kind of net out any situations where the COI rate is over or under expected mortality as you're using those terms, yields a net positive or a net negative?
A Yeah, it's a different exercise.
Q Okay. Did you perform the exercise that I just tried to describe, trying to figure out whether on a net basis somebody was better off or worse off with the COI scales that Plaintiffs are proposing here?
MR. LYTLE: Object to the form.
THE WITNESS: I know with -- I know with certainty that Plaintiffs would be better off with the proposed scale because my understanding of Plaintiff's theory is that the goal is to strip out the excess. So the COI rates will be capped at the COI rate, the --
BY MR. MATTSON:
Q At the mortality rate?

A No, the rate that would be used in my calculation is really the lesser of the expected mortality rate or the actually charged COI rate, because my understanding of Plaintiff's theory is that the breach was any charge that was in excess of expected mortality. There's no contractual -- my understanding, there's no contractual prohibition of the company charging less than expected mortality.
So my exercise is to -- the exercise that I went through, what I believed my charge to be, was that I was to remove the excess from the COI to the extent that that excess was a non-mortality component.
Q Are you familiar with the phrase, Heads, I win; tails, you lose?
A I am.
Q Isn't that kind of what Plaintiff is proposing here?
MR. LYTLE: Object to the form.
THE WITNESS: I don't think so. Again, Plaintiff's theory as I understand it is that the alleged wrongdoing comes anytime that a charge is levied that is greater than the expected mortality. So it's not a straight substitution as much as it is an elimination of the excess of that COI charge.
BY MR. MATTSON:

count five as well about declaratory and injunctive relief; is that --
A Yes.
Q -- consistent with your recollection?
A Yes.
Q All right. So I'm just focusing on the three different theories of why Plaintiff says USAA Life did not abide by the contract, okay?
A Okay.
Q And you show total damages here of $2,190.84, yes?
A Yes.
Q Is that showing damages for the count one theory, the count two theory, or the count three theory or some combination?
MR. LYTLE: Object to the form.
THE WITNESS: The count one theory. Also my understanding is that that's also the count two damages, and then count three is not addressed by this spreadsheet.
BY MR. MATTSON:
Q Is there a dollar figure that you calculated for count three damages anywhere in Exhibit 1 or the exhibits to it?
A Can I look at my --
Q Of course.

A No, the only thing I put in my report was a demonstration of one particular policy year for Mr. Spegele. His 28th policy year I calculated what the overcharge percentage would be in that one particular year, and that overcharge percentage is above and beyond what would have been calculated in count one such that there is no overlap between count one and then count three damages. The count three damages are above and beyond the count one with no overlap.
Q Okay. Let's go back to Exhibit 2. First why don't you tell me what your understanding is of what qualifies as count one damages.
MR. LYTLE: Object to the form.
THE WITNESS: Can I refer to my report on that?
BY MR. MATTSON:
Q Yes, of course.
A I believe I took the time to spell out those different counts.
Q Are you looking at paragraph 13 by chance?
A I am, yes. And I'm just getting ready to restate that.
Q Yes.
A So my understanding is that count one, Plaintiff's

And from that limited data I attempted to extrapolate various elements that would allow me to calculate the damages as shown here.
Q Turning to count two -- and feel free to look back at your report. I think it's paragraph 14 -- can you describe what count two damages are in this case?
A My understanding is that Plaintiff's theory is that USAA should have been limited to charging only the expenses that were stated in the policy based on the contractual language. I believe in the first year there was an administrative charge, and then in all years including first year, there was a maintenance charge.
My understanding is that the calculation that I have performed here takes the viewpoint that any charge in the COI rate that's above and beyond the expected mortality is viewed as an expense, and as such the count two damages would be identical to count one.
Q Is -- do you consider profit to be an expense?
A It could be from the policyholder's viewpoint.
Q Is it? That doesn't sound natural to me. Does that sound right to you?
MR. LYTLE: Object to the form.
BY MR. MATTSON:

Q That the profit is an expense?
MR. LYTLE: Same objection.
THE WITNESS: I -- I was engaged to calculate damages based on Plaintiff's theory. I wasn't engaged to come up with their theories.
BY MR. MATTSON:
Q When you were at Northwestern Mutual, didn't you distinguish between profit and expense?
MR. LYTLE: Object to the form.
THE WITNESS: I don't recall there being separately identifiable profit components of COI charges.
BY MR. MATTSON:
Q That's not my question. As an actuary when -- well, let's go back to a concept you mentioned before, expense units.
A Yes.
Q Remember our discussion about that?
A I do.
Q When you were working on expense units at Northwestern Mutual, was profit part of an expense unit?
A Not to my recollection.
Q When insurance companies talk about their expenses, they talk about things like paying the light bill,

paying their employees, paying for information technology, things that they have to come out of pocket to pay for, right?

MR. LYTLE: Object to the form.

THE WITNESS: That sounds right.

BY MR. MATTSON:

Q And when they talk about profit, that's how much money is left over after all expenses are paid, right?

MR. LYTLE: Object to the form.

THE WITNESS: Sounds right.

BY MR. MATTSON:

Q So in count two when we're talking about expenses, we're not talking about profit, are we?

MR. LYTLE: Object to the form.

THE WITNESS: Well, I think I described in my report, if I am directed to handle that differently, the model is capable of calculating different count two damages.

From the policyholder perspective, my understanding is that Plaintiff's theory is that all of the extras that are dumped into the COI rate are viewed as an expense. It's an amount above and beyond that the contract allowed USAA to charge the policyholder.

If information comes to light that allows me to partition that amount between -- or if I'm directed on how to partition that amount between expenses and profit, the model is capable of doing that. But as it stands right now, based on the information that's available, the count two damages would equal the count one damages.

BY MR. MATTSON:

Q What's your understanding, Mr. Witt, of what things USAA Life considered when setting its cost of insurance rates for the UL3 and the UL4?

MR. LYTLE: Object to the form.

THE WITNESS: My understanding would come from the documents that I reviewed and the depositions -- transcripts of the depositions. My recollection is that many things went into the development of the COIs.

BY MR. MATTSON:

Q One of those things was expected mortality, correct?

A I mean -- I think it's fair to say that everything goes into -- every assumption, every material assumption is considered in a typical pricing exercise.

Q And one of those assumptions in the case of USAA Life and the UL3 and UL4 policies was expected mortality,

Q I may be halfway there in understanding you, but I'm not all the way there, so let me try to get all the way there.

So if you look at Exhibit 2, I had understood that the column labeled Monthly Pricing Mortality reflects your understanding of what USAA Life's understanding was at any given moment about expected mortality?

A Yes, but I limited that to the four distinct points in time at which a new COI scale was developed, thinking that those were -- those were particular points in time that USAA took action and had a -- had an expected mortality assumption. And so the original UL3 pricing, the UL3 repricing, the UL4 pricing, the UL4 repricing, those are the only four sources of mortality that are shown in Exhibit 2.

And that includes all the way down into the final -- the policy year 28. I did not switch to the 2017 mortality in this exhibit. I stayed with the UL2 -- UL4, sorry -- I stayed with the UL4 repricing mortality.

So if I were then to come in and calculate Exhibit 3, it would -- I would be looking at the improvement --

Q I'm sorry, calculate damages for count three?

A Sorry, for count three, I would be comparing the UL4 repricing mortality with whatever I was using to represent the count three mortality. And for the purposes of this report, I have used the 2017 mortality as a placeholder.
Q Why is that a placeholder?
A There are many mortality tables that were -- and studies that were done between -- is it 2005? Let me see here. I'm just looking for when the UL4 was repriced. Looks like it was 2005.
So there are a number of mortality studies between 2005 and 2017. I made no effort to ascertain how those improvements might be reflected in count three. I -- my instructions were to demonstrate that a count three -- my model could handle a count three methodology for whatever those assumptions would be.
And in my mind it remains an open question how exactly the expected mortality improvement would be defined in that period of 2005 and onward.
Q Would this count three methodology you're describing change any of the analysis for pre 2005 -- the pre 2005 time frame?
A No, and in fact it wouldn't change post 2005 for count one.
Q I'm just talking about count three.

of any reason why there would be any count three damages prior to 2005. That would all be encapsulated in the count one damages.

BY MR. MATTSON:

Q Okay. And then what you do is look at from 2005 on what evidence there is at USAA Life about changes in mortality expectations?

A Yes.

Q Can we look anywhere in Exhibit 1, including its exhibits, and find which documents, which USAA Life documents you would be relying on to perform that calculation?

MR. LYTLE: Object to the form.

THE WITNESS: I believe they're listed in there. I would be hard pressed to point to them on the fly. I mean I can -- I can get there by following the trail in my report. But I can't off the top of my head tell you which exhibit or what Bates number they are.

BY MR. MATTSON:

Q In other words there's nothing in Exhibit 1 that says separately, here are the documents I would look at for count three in performing the calculations that you've just been describing these last several minutes?

MR. LYTLE: Object to the form.

THE WITNESS: I guess I view it as two distinct -- two distinct issues. There's the model and understanding how the model works and how the count three formula is distinct from the count one. And then a separate question is what mortality assumptions do you put into the model in calculating those count three damages. I don't know which you're asking me.

BY MR. MATTSON:

Q I'm asking you about the second one. And really to try to state it more plainly, can you point me in Exhibit 1 to where I would see the mortality expectations you would -- you would plug into your count three analysis?

A Okay, I'm -- I -- in paragraph 73 I describe how for Mr. Spegele's 28th policy year I'm comparing the mortality that was assumed in 2005 when the repricing was done with the expected mortality using the 2017 mortality assumption.

So my recollection is that the 2017 mortality assumption came from a USAA-supplied document that had a mortality study. And there were other such studies in the intervening years between 1995 -- I'm sorry, between -- strike that -- between

2005 and 2017.
I made no effort at this time to -- to go beyond what I just did here. And I looked at the most recent. Seemed clear that there had been substantial mortality improvement. I'll leave it at that.
Q So I think I understand. In paragraph 73 of Exhibit 1 you refer to the 2017 mortality assumptions, right?
A Yes.
Q But I wouldn't find in Exhibit 1, and here's my list of pre 2017, post 2005 mortality assumptions that I would rely on in conducting this count three analysis; is that fair?
A I believe that they are listed in the litany of documents that were reviewed and provided, but I don't have -- I don't have a written, you know, step by step these are the mortality studies that I'm going to look at.
Q Right.
A In my mind everything is fair game that USAA has provided related to this case, related to expected mortality assumptions between the time period 2005 and 2017.
Q And I think we're on the same page, but let me just

be sure. There's nothing in Exhibit 1 that calls -- specifically calls out which documents you would look at for that 2005 to 2017 time frame, which documents would inform your understanding of the then-current mortality expectations?

A I think that's fair to say. If I am charged to do so, I will look at all of those documents and -- and this is where some actuarial judgment may come in -- and formulate an appropriate assumption.

MR. MATTSON: Okay. Let's take a short break.

THE VIDEOGRAPHER: We're going off the record at 11:24 a.m. This will be the end of media unit number two.

(Recess taken from 11:24 to 11:37 a.m.)

THE VIDEOGRAPHER: We're back on record at 11:37 a.m. This will be the beginning of media unit number three.

BY MR. MATTSON:

Q Mr. Witt, when you were at Northwestern Mutual, did you ever work on a policy that was designed to lose money from day one and never make money?

A No.

Q Would doing that be permissible under the actuarial standards of practice?

future mortality, right?
A Correct.
Q And then time goes on and some people continue living, some people die, and you can look back and see how close your assumptions were to what actually turned out to happen, right?
A Correct.
Q And all I'm suggesting is that those two things are almost always going to be at least somewhat different?
A Agreed.
MR. LYTLE: Object to the form.
THE WITNESS: I would agree with that.
BY MR. MATTSON:
Q When you look at what Plaintiff's theory is for count one, is it your understanding that Plaintiff's view is that for the cost of insurance rate to be based on mortality, it must be set to precisely mirror the company's expectations as to future mortality?
MR. LYTLE: Object to the form.
THE WITNESS: That's my understanding of their interpretation.
BY MR. MATTSON:
Q Would it be your view that a rate -- strike that.
Is it prudent as an actuary to build in

one -- you'll recall this morning we talked about whether you had analyzed whether mortality had improved continuously over time for every cell potentially implicated in this case. And I think you said, and I'll paraphrase -- you said whatever you said -- that you had looked at some of those things at a high level but hadn't done sort of a cell-by-cell analysis.

A That's fair to say.

Q So what I want to do is walk through one example with you of where it appears to us that mortality worsened for a particular cell over time.

A Okay.

Q And really just for the purpose of making sure that you agree that that is in fact what happened for that particular cell, okay?

A Okay.

Q All right. So first if you will look at the tab on your spreadsheet for 1987 UL pricing.

A Could it be 1987 mort?

Q I think it's called 1987 mort, yes.

A Okay. I'm there.

Q And if you will then look at row 314, column I.

A Okay.

Q And you can -- can you tell me what the mortality

ex -- expected mortality as you understand it is for that particular cell.
A 14.04.
Q And who does that cell apply to, who -- not what person, but what demographic?
A Looks like that is a female smoker, age -- well, issued at 65 and in their sixth policy duration.
Q And the number there, the relevant number of mortality expectation is 14.04?
A Correct.
Q So we're going to look at two more cells with different mortality expectations, and I guess I want you to confirm that, A, it's apples to apples, meaning it's the same demographic characteristics; and B, that at least at some point the expected mortality for that set of demographics worsened.
A Okay.
Q Does that make sense?
A It does.
Q Okay. So the next one to look at is the 1994 repricing which I believe on your spreadsheet is the 1994 mort.
A Okay.
Q And if you look there at -- I think it's the same row and same column, row 314, column I, let me know what

you see there.
A If I'm in the right spot, 10.9161.
Q Okay. So in that comparison, mortality actually got better if I'm understanding how these numbers work?
A I agree.
Q Okay. And then if we look in the 2017 mort tab, again row 314, column I, what's the mortality at that point?
A 22.8.
Q So a significant worsening of mortality?
A Correct.
Q Okay. So back to my original point, for this particular -- well, first of all, each of the three cells that we looked at is for the same demographic cohort, right; in other words, these are --
A The same cell, if you will?
Q Yes.
A Yes.
Q Yes, okay. So same cell, different times, and what we saw was the mortality for the people covered by that cell got somewhat better and then got significantly worse?
A Agreed.
Q And the ultimate mortality expectation that we see in 2017 is significantly worse than it was at inception?

A Inception was 14 point something, is that --
Q Yes, 14.04.
A I agree. And I do recall documentation talking about smoker rates worsening over time. So I think when I answered before it was a broad overall mortality improvement. I may have misspoken. I -- I am not under the impression that literally every single cell had improvement across the board.
Q Okay. Understood. And just to be clear, the example we just went through for the last few minutes is one example of in this case mortality getting somewhat better and then getting significantly worse, even worse than it was at inception?
A Agreed.
Q When USAA Life repriced in 1994, it lowered the cost of insurance rates for many insureds; is that fair?
MR. LYTLE: Object to the form.
THE WITNESS: That's my recollection, although my focus was on Mr. Spegele's policy.
BY MR. MATTSON:
Q Did -- when USAA Life did a repricing of the UL3 in 1994, Mr. Spegele's cost of insurance rates were lowered, weren't they?
A I don't know if they were immediately. I think his scale was lowered, and then once he reached a certain

STATE OF WISCONSIN)
) SS:
MILWAUKEE COUNTY)

I, Tammy R. O'Neal, RPR and Notary Public in and for the State of Wisconsin, do hereby certify that the preceding deposition was recorded by me and reduced to writing under my personal direction.

I further certify that said deposition was taken at Gass Weber Mullins LLC, 241 North Broadway, Milwaukee, Wisconsin, on the 30th day of January, 2020, commencing at 9:08 a.m. and concluding at 1:56 p.m.

I further certify that I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

In witness whereof, I have hereunto set my hand and affixed my seal of office on this 3rd day of February, 2020.

Tammy O'Neal

TAMMY R. O'NEAL, RPR
Notary Public

My commission expires 8/2/23.